

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 45/AIL/Lab./J/2013, dated 5th April 2013)

## NOTIFICATION

Whereas, an award in I. D. No. 4/2011, dated 10-1-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, Supreme Industries Limited, Puducherry and Thiru Karunakaran, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/90/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PUDUCHERRY

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
Presiding Officer, Labour Court.

Thursday, the 10th day of January 2013

## I.D. No. 4/2011

Karunakaran . . . Petitioner

Versus

The Managing Director,  
Supreme Industries Limited,  
Sanyasikuppam, Thirubuvanai,  
Puducherry. . . Respondent

This industrial dispute coming on 5-1-2013 for final hearing before me in the presence of Thiru S. Nagarajan, Advocate for the petitioner, Thiru K. Parthiban, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

## AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 29/AIL/Lab./J/2011, dated 7-2-2011 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru R. Karunakaran against the management of M/s. Supreme Industries Limited, Sanyasikuppam, Puducherry, over non-employment is justified or not?

(2) If justified, to what relief, the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as Operator in the respondent management from October 1997 and he was the President of Supreme Labour Union. The attitude of the respondent management towards the petitioner was unfair in all respects and including his self-respect. On 8-12-2005, the respondent management terminated him from service without any basis. The respondent management issued a charge sheet with false allegations. The enquiry was conducted and in the enquiry, the petitioner was not afforded a reasonable opportunity to prepare and present his claim. Hence, the termination of the petitioner is purely illegal and the same is liable to be set aside. Therefore, the industrial dispute is filed for the reinstatement of the petitioner with other benefits.

3. In the counter statement, the respondent has stated as follows:-

The petitioner was appointed as trainee on 27-10-1997 in the respondent company as Operator. Then the petitioner started forming a group among the workers and started threatening the respondent management under the pretext that he is the leader to solve the problems of the workers. The petitioner behaved indifferently and did not obey the order of the superiors. He never attended his duty sincerely and when the superior asked him to do the duty, he threatened the superiors and executives and loitered in the working place unnecessarily with other workers, who are attending the work sincerely. The respondent management warned the petitioner several times, but the petitioner did not change his attitude. Due to the petitioner's atrocious acts under the pretext of the so called leader of some group of employees, the other workers and staff and executives apprehended unsafely for their life as the petitioner used to threaten them with dire consequences stating that if they come out from the factory, he will do away with their life. Further the petitioner often absented in his duty without due permission or leave. Hence, the management faced with administrative hardships and production loss and hence the respondent management took steps to conduct domestic enquiry against the petitioner.

Having come to know about the same, in order to blackmail the respondent management, the petitioner had obtained signatures from two workers namely, Gandhivaradhan and R.S. Sivakumar and filed a false complaint before the PCR Cell against one Murali, who was the Deputy General Manager, one Mangala Kounder, who was the Senior Manager (Production), as if they have scolded the said workers by using their caste. Since the petitioner's atrocities and harassment were not tolerable, the respondent issued a show cause notice to the petitioner on 5-7-2005 and since the explanation given by the petitioner was not satisfactory, the management conducted domestic enquiry against him. In the domestic enquiry fair opportunity was given to the petitioner and having come to know that the evidence was not helpful for him, the petitioner wantonly failed to participate in the enquiry and left the enquiry proceedings. The Enquiry Officer having conducted fair and just enquiry in accordance with law by adopting the principles of natural justice, had given the findings that the petitioner was guilty of the charges and based on the enquiry report, the petitioner was terminated from service with effect from 3-12-2005. Since the termination of the service of the petitioner is based on the proved misconducts, the petitioner deserves nothing except dismissal of the above petition. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner PW.1 was examined and marked exhibits P1 to P18. On the side of the respondent, RW.1 was examined and exhibits R1 to R32 were marked.

5. *Now the point for determination is :*

"Whether the petitioner is entitled for the relief sought for?"

6. *On this point :*

The main contention of the petitioner is that since he became the President of the M/s. Supreme Labour Union-II, which was started against the wishes of the respondent management, he was terminated from service on the alleged ground that he has caused serious misconduct of giving false complaint before PCR Cell as against the Deputy General Manager and Senior Manager (Production) of the company by obtaining signature in blank papers from his own union members namely, Gandhivaradhan and R.S. Sivakumar, who belong to scheduled caste community, stating that the said managers of the respondent company had scolded them by using their caste and due to the false and malicious complaint, the said managers had faced with unnecessary police harassment and torture for no fault on them.

7. In order to disprove the abovesaid allegations, the petitioner examined himself as PW.1 and in his evidence he has deposed that he worked sincerely and rendered his service to the utmost satisfaction of the superiors and gained good reputation among workers and his trade union is a major one in the respondent management by the strength of the voluminous of the employees and the attitude of the respondent management was unfair in all respects and including his self-respect but the management had terminated him from the service through its callous attitude with ultimate victimisation and his termination is purely illegal and against the norms and procedures and natural justice. He also deposed that he was issued a namesake charge sheet without any basis and conducted the domestic enquiry without adhering to the principles of natural justice and the Enquiry Officer is also a flea of management and he was not offered a reasonable opportunity to present his claim and he was forced and misguided by the Enquiry Officer tacitly and the respondent management has terminated him without any basis and evidence against him and he was not supplied with any copies of the document during the course of enquiry and the witnesses were put under threat and no proper enquiry was conducted and that the respondent management prepared and designed the enquiry report with the collusion of the Enquiry Officer without partaking of himself and failed to supply the report of the enquiry. He further deposed that the act of the management is sheer abuse of process of natural justice and he was victimised by the respondent management.

8. In order to support his claim, PW.1 marked exhibits P1-Copy of complaint by petitioner before Conciliation Officer, P2 -Copy of charter of demands by the petitioner to respondent, P3- Edition of Puducherry Gazette Notification, P4 -Copy of Letter by petitioner to Superintendent of Police, P5- Letter by respondent to the petitioner, P6 - Copy of letter by petitioner to respondent, P7 - Show cause notice by respondent to the petitioner, P8 - Copy of reply to show cause by petitioner, P9 - Suspension order by respondent to the petitioner, P10 - Letter by respondent to the petitioner, P11 - Copy of letter by petitioner to Enquiry Officer, P12 - Copy of complaint by petitioner to Conciliation Officer, P13 - Reply by respondent before Conciliation Officer, P14 - Copy of counter reply by petitioner before Conciliation Office, P15 - Failure report by Consolation Officer, P16 - Industrial dispute reference order by Labour Department, P17 - Inspection notice by Labour Officer (Enforcement) and P18 - Xerox copy of the Standing Order.

9. *Per contra*, the respondent contended that the petitioner was appointed as trainee on 27-10-1997 and soon after confirmation of service, he started forming a

group among the workers and started threatening the supervisor, staffs, executives and officials of the company under the pretext that he is the President of the trade union and behaved indifferently without obeying the order of the superiors and instead of attending the duty, threatened the supervisors and executives and loitered in the working place talking unnecessarily and persistently indulged in riotous and disorderly behaviour during his duty and did not obey the orders of the superiors in spite of warning for several times and also threatened the other workers, supervisors, staffs and executives with dire consequences due to that they apprehended unsafety. He further contended that the petitioner also absented in his duty without due permission or leave and in the said circumstances the management took steps to conduct domestic enquiry against him and having come to know about the proposal of conducting domestic enquiry, the petitioner in order to blackmail the management, had obtained signatures in two blank papers from two workers namely, Gandhivaradhan and R.S. Sivakumar, who were associated with him in his union activities and misused the same to give a false police complaint before the PCR Cell, against Mr. Murali, the Deputy General Manager and Mr. Mangala Kounder, the Senior Manager (Production) of the company as if they have scolded them by mentioning their caste and therefore, a due domestic enquiry was conducted upon the charge sheet, dated 5-7-2005 and the petitioner was given fair opportunity to defend him in the enquiry, the petitioner also participated and upon the proved misconduct, the petitioner was terminated from service with effect from 3-12-2005 as per law.

10. In order to prove the contentions, the respondent himself examined as RW.1 and assertively stated the said contentions in his deposition and in support of the same marked the exhibits R1 to R 32. Exhibit R1 is the certified true copy of the Board Resolution, Ex.R2 Power of attorney deed, Ex.R3 Copy of the letter, dated 17-7-2005 sent by the respondent to the petitioner, Ex.R4 is the list of witnesses, Ex.R5 is the list of documents submitted for domestic enquiry, Ex.R6 is the enquiry postponed letter, dated 19-8-2005, Ex.R7 is the postal acknowledgment, dated 26-8-2005, Ex.R8 is the envelope cover of the French Express Courier, Ex.R9 is the copy of the letter, dated 25-7-2005 sent by the petitioner to the enquiry office, Ex.R10 is the copy of the letter, dated 27-6-2005 sent by one Subramanian to the respondent, Ex.R11 is the copy of the letter, dated 27-6-2005 sent by one Gandhi to the respondent, Ex.R12 is the copy of the letter, dated 5-7-2005 sent by the respondent to the petitioner, Ex.R13 is the copy of the letter, dated 9-7-2005 sent by the petitioner to the respondent, Ex.R14 is the copy of the letter, dated 11-7-2005 sent by the respondent to the petitioner,

Ex.R15 is the acknowledgment card, Ex.R16 is the copy of the intimation letter, dated 15-7-2005 sent by the respondent to the Enquiry Officer, Ex.R17 is the enquiry proceedings, Ex.R18 is the enquiry report, Ex.R19 is the letter, dated 8-11-2005 sent by the Security Officer to the respondent, Ex.R20 is the letter, dated 9-11-2005 sent by the respondent to the petitioner, Ex.R21 is the paper publication, Ex.R22 is the copy of the letter, dated 23-5-2006 sent by the respondent to petitioner, Ex.R23 is the copy of the letter, dated 18-4-2007 sent by the respondent to the petitioner, Ex.R24 is the copy of the deposit slip, Ex.R25 is the confirmation letter, dated 1-1-2000 sent by the respondent to the petitioner, Ex.R26 is the warning letter, Ex.R27 is the letter, dated 21-7-1998 sent by the petitioner to the respondent, Ex.R28 is the letter, dated 11-11-1998 sent by the petitioner to the respondent, Ex.R29 is the letter, dated 17-2-1999 sent by the petitioner to the respondent, Ex.R30 is the letter, dated 1-4-1999 sent by the petitioner to the respondent, Ex.R31 is the letter, dated 2-6-1999 sent by the petitioner to the respondent, Ex.R32 is the certified copy of the order passed in I.D. No. 8/2005, dated 3-8-2009.

11. On the perusal of the exhibits Ex.R1 to R32, particularly, the Ex.R17 which is the proceedings of the enquiry, it is evident that the domestic enquiry was conducted in respect of the show cause-*cum*-charge sheet *i.e.*, Ex.R12, and the petitioner was given fair opportunity to participate and defend in the enquiry. Further, the perusal of the enquiry proceedings reveals that the petitioner participated in the enquiry proceedings and cross-examined the management witness namely, Gandhivaradhan. But the petitioner has stated before this court that he was not given reasonable opportunity in the enquiry proceedings. It is also found that the Enquiry Officer has followed the principles of natural justice while conducting the enquiry and therefore the allegations of the petitioner is not justifiable. Though the petitioner has claimed that the punishment is not proportionate to the misconduct attributed by him, the version of RW.1 as to the unnecessary police harassment faced by the superior management staffs due to false PCR Cell complaint and threat to the workers and staff which are evidenced by the exhibits of the respondent particularly by Ex.R12, R17 and R18, the management would not have imposed minimum punishment as the proved misconduct was of serious nature which resulted in loss of confidence on the petitioner. Considering the above aspects, this court feels that an independent domestic enquiry was conducted in respect of Ex.R12, the charge sheet, dated 5-7-2005, by the management and in the domestic enquiry fair opportunity was given to the petitioner by permitting him to engage a co-worker to assist him in the enquiry, allowing him to cross-examine the management witnesses to defend him and the independent Enquiry

Officer having conducted a fair and proper enquiry in accordance with law by adopting the principles of natural justice had concluded that the petitioner is guilty of the charges levelled against him by Ex.R18, the enquiry report, dated 20-9-2005 and hence it was not against the principles of natural justice. Since the management apprehended unsafety due to the serious misconducts of the petitioner more particularly due to the false complaint with the PCR Cell by obtaining signature of co-union members of the petitioner trade union, the respondent has lost confidence on the petitioner, as the act of the petitioner is detrimental to the discipline and security of the establishment. Therefore, the above situation created a ground for loss of confidence and hence this court feels that the petitioner has lost the right of reinstatement in this case. It is pertinent to refer the following decision which is relevant to this case.

*2001 3 CLR Page 592 :*

“Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost”.

12. According to the petitioner, he joined the service from October 1997 as Operator and continued as Operator till 3-12-2005 in the respondent company. Eventhough the petitioner was terminated from service for the proved misconduct, his family should not get suffered. In view of the same, the petitioner can be awarded any monetary compensation, which would meet ends of justice. The point is answered accordingly.

13. In the result, this industrial dispute is partly allowed and the petitioner is not entitled for reinstatement with other benefits. However the petitioner is entitled to the monetary compensation of ₹ 1,10,000 (Rupees one lakh and ten thousand only). No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 10th day of January, 2013.

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.

*List of witnesses examined for the petitioner:*

PW.1 — 25-10-2012 — Karunakaran

*List of witnesses examined for the respondent:*

RW.1 — 26-2-2012 — Ilakis Tendril, Executive  
HR of respondent company.

*List of exhibits marked for the petitioner:*

- Ex.P1 — Copy of complaint by petitioner before Conciliation Officer, dated 6-1-2005.
- Ex.P2 — Copy of charter of demands by the petitioner to respondent, dated 12-1-2005.
- Ex.P3 — Edition of Puducherry Gazette Notification, dated 24-5-2005.
- Ex.P4 — Copy of letter by petitioner to Superintendent of Police, dated 18-5-2005.
- Ex.P5 — Letter by respondent to the petitioner, dated 11-6-2005.
- Ex.P6 — Copy of letter by petitioner to respondent, dated 16-6-2005.
- Ex.P7 — Show cause notice by respondent to the petitioner, dated 5-7-2005.
- Ex.P8 — Copy of reply to show cause by petitioner, dated 9-7-2005.
- Ex.P9 — Suspension order by respondent to the petitioner, dated 11-7-2005.
- Ex.P10 — Letter by respondent to the petitioner, dated 11-7-2005.
- Ex.P11 — Copy of letter by petitioner to Enquiry Officer, dated 30-7-2005.
- Ex.P12 — Copy of complaint by petitioner to Conciliation Officer, dated 3-11-2008.
- Ex.P13 — Reply by respondent before Conciliation Officer, dated 26-4-2010.
- Ex.P14 — Copy of counter reply by petitioner before Conciliation Officer, dated 8-6-2010.
- Ex.P15 — Failure report by Consolation Officer, dated 10-12-2010.
- Ex.P16 — Industrial dispute reference order by Labour Department, dated 7-2-2011.
- Ex.P17 — Inspection notice by Labour Officer (Enforcement), dated 14-1-2004.
- Ex.P18 — Xerox copy of the standing order.

*List of exhibits marked for the respondent:*

- Ex.R1 — Certified true copy of the Board resolution, dated 25-1-2012.
- Ex.R2 — Power of attorney deed, dated 10-4-2012
- Ex.R3 — Copy of the letter, dated 17-7-2005 sent by the respondent to the petitioner.
- Ex.R4 — List of witnesses, dated 3-8-2005
- Ex.R5 — List of documents submitted for domestic enquiry, dated 3-8-2005.
- Ex.R6 — Enquiry postponed letter, dated 19-8-2005
- Ex.R7 — Postal acknowledgment, dated 26-8-2005
- Ex.R8 — Envelope cover of the French Express Courier, dated 26-8-2005.
- Ex.R9 — Copy of the letter, dated 25-7-2005 sent by the petitioner to the Enquiry Officer.
- Ex.R10 — Copy of the letter, dated 27-6-2005 sent by one Subramanian to the respondent.
- Ex.R11 — Copy of the letter, dated 27-6-2005 sent by one Gandhi to the respondent.
- Ex.R12 — Copy of the letter, dated 5-7-2005 sent by the respondent to the petitioner.
- Ex.R13 — Copy of the letter, dated 9-7-2005 sent by the petitioner to the respondent.
- Ex.R14 — Copy of the letter, dated 11-7-2005 sent by the respondent to the petitioner.
- Ex.R15 — Acknowledgment card
- Ex.R16 — Copy of the intimation letter, dated 15-7-2005 sent by the respondent to the Enquiry Officer.
- Ex.R17 — Enquiry proceedings
- Ex.R18 — Enquiry report, dated 20-9-2005
- Ex.R19 — Letter, dated 8-11-2005 sent by the Security Officer to the respondent.
- Ex.R20 — Letter, dated 9-11-2005 sent by the respondent to the petitioner.
- Ex.R21 — Paper publication, dated 8-12-2005
- Ex.R22 — Copy of the letter, dated 23-5-2006 sent by the respondent to the petitioner.
- Ex.R23 — Copy of the letter, dated 18-4-2007 sent by the respondent to the petitioner.
- Ex.R24 — Copy of the deposit slip
- Ex.R25 — Confirmation letter, dated 1-1-2000 sent by the respondent to the petitioner.
- Ex.R26 — Warning letter, dated 1-3-2004
- Ex.R27 — Letter, dated 21-7-1998 sent by the petitioner to the respondent.
- Ex.R28 — Letter, dated 11-11-1998 sent by the petitioner to the respondent.

Ex.R29 — Letter, dated 17-2-1999 sent by the petitioner to the respondent.

Ex.R30 — Letter, dated 1-4-1999 sent by the petitioner to the respondent.

Ex.R31 — Letter, dated 2-6-1999 sent by the petitioner to the respondent.

Ex.R32 — Certified copy of the order passed in I.D. No. 8/2005, dated 3-8-2009.

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

*(G.O. Rt. No. 47/AIL/Lab./J/2013, dated 8th April 2013)*

**NOTIFICATION**

Whereas, an award in I.D. No. 42/2012, dated 26-10-2012 of the Labour Court, Puducherry in respect of the industrial dispute between one Thiru Dhanapal and (1) The Proprietor, Prathit Erection and (2) The General Manager, Chemplast Sanmar Limited, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**S. THAMMU GANAPATHY,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
Presiding Officer, Labour Court,  
Puducherry.

*Friday, the 26th day of October 2012*

**I.D. No. 42/2012**

Dhanapal . . . Petitioner

*Versus*

- (1) Prathit Erection,  
Rep. by its Proprietor,  
No. 21/1, 5th Cross Street,  
R.V. Nagar, Chennai.

(2) Chemplast Sanmar Limited,  
Rep. by its General Manager,  
Melavanjore, T.R. Pattinam,  
Karaikal. . . Respondents

This industrial dispute coming on 17-10-2012 for final hearing before me in the presence of Thiru P. Muthukrishnan, Advocate for the petitioner, Thiru A.V.J. Selva Muthukumaran, Advocate for the first respondent, Thiru R. Thambiraj, Advocate for the second respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

#### AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.77/AIL/Lab./J/2008, dated 7-4-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondents, *viz.*,

(1) Whether the dispute raised by the petitioner seeking employment in the labour contract of M/s. Prathit Erection, Maintenance Services, Chennai in the establishment of Chemplast Sanmar Limited, Melavanjore, T.R. Pattinam, Karaikal is justified or not?

(2) If justified, what relief he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as a Mechanical Fitter in the contract of first respondent's company, who registered the contract with the second respondent's company from 1992 to 2004 and his monthly salary was ₹ 2,700 and ₹ 450 as mess allowance. He was terminated from service on 15-5-2004 without any notice or assigning any reason. The petitioner made several request to reinstate him into service with the both respondents, but his request was not considered. Hence, he has given a complaint before the Labour Officer and during the conciliation, both the respondents were rigid in their stand and amicable settlement was not arrived. Hence, the Labour Officer sent a failure report to the Government on 9-4-2007. Therefore, this industrial dispute is filed for his reinstatement with backwages.

3. In the counter statement, the first respondent has stated as follows:

In 1995/1996 Kothari Petrochemicals Limited, Chennai acquired land in Karaikal to put up an Alkali Chlorine Plant and the plant put up by Kothari commenced operation in the year 1997. The first respondent was awarded the contract for undertaking break down maintenance, filling liquefied chlorine in cylinders and cylinder maintenance and testing. The petitioner was appointed for doing the contract job and he was engaged for attending to manual errands of the plant technicians. His job was mainly to assist the technicians in attending to break down maintenance.

In August 2003, when the second respondent purchased the plant from Kothari Petrochemical Ltd., the second respondent requested the first respondent to continue the contract for break down maintenance, chlorine filling and cylinder testing. In May 2004, the second respondent withdrew the job of break down maintenance and cylinder testing. Hence, the first respondent offered the petitioner job in chlorine filling. He was not interested in doing that job. The maintenance contract was given to Meera Fabricator and the petitioner was being engaged by the said Meera Fabricator. Hence, the first respondent is no longer the contractor of the second respondent for maintenance and therefore the question of considering the petitioner for employment does not survive for consideration. Hence, they pray for dismissal of the industrial dispute.

3. In the counter, the second respondent has stated as follows:

As the petitioner was a Fitter, the first respondent engaged him as a casual labour for attending to repairs and maintenance of the pipelines in the plant of the second respondent. However, for his own reasons, the first respondent did not evince interest in the contract of mechanical maintenance and the contract was put an end to on 15-5-2004. In fact, the said job was given on a contract to another contractor by name Meera Fabricator. After the cessation of the contract between the first and second respondent and the emergence of Meera Fabricator as a contractor, the petitioner had worked under Meera Fabricator for some time. To the knowledge of the second respondent, after working with Meera Fabricator for some time, the petitioner left the job in his own volition and started pursuing an independent occupation as a real-estate agent. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, he examined himself as PW.1 and Ex.P1 to Ex.P5 were marked. On the side of the respondents, RW.1 was examined and Ex.R1 to Ex.R11 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

The contention of the petitioner is that he was working as a Mechanical Fitter in the contract of first respondent's company, who registered the contract with the second respondent's company from 1992 to 2004 and he was terminated from service on 15-5-2004 without any notice or assigning any reason and he made several request to reinstate him into service with the both respondents, but his request was not considered. In order to prove his claim, he examined himself as PW.1.

7. The contention of the first respondent is that the petitioner was appointed for doing the contract job and he was engaged for attending to manual errands of the plant technicians and his job was mainly to assist the technicians in attending to break down maintenance and in August 2003, when the second respondent purchased the plant from Kothari Petrochemical Limited the second respondent requested the first respondent to continue the contract for break down maintenance, chlorine filling and cylinder testing and in May 2004, the second respondent withdrew the job of break down maintenance and cylinder testing and hence, the first respondent offered the petitioner job in chlorine filling and he was not interested in doing that job and the maintenance contract was given to Meera Fabricator and the petitioner was being engaged by the said Meera Fabricator and hence, the first respondent is no longer the contractor of the second respondent for maintenance and therefore the question of considering the petitioner for employment does not survive for consideration.

8. The contention of the second respondent is that as the petitioner was a Fitter, the first respondent engaged him as a casual labour for attending to repairs and maintenance of the pipelines in the plant of the second respondent, however, for his own reasons, the first respondent did not evince interest in the contract of mechanical maintenance and the contract was put an end to on 15-5-2004 and in fact, the said job was given on a contract to another contractor by name Meera Fabricator and after the cessation of the contract between the first and second respondent and the emergence of Meera Fabricator as a contractor, the petitioner had worked

under Meera Fabricator for some time and to the knowledge of the second respondent, after working with Meera Fabricator for some time, the petitioner left the job in his own volition. In order to prove his claim, the Joint Manager of the second respondent company was examined as RW.1.

9. Now this court has to see whether the petitioner was employee under the first respondent or the second respondent.

10. PW.1 in his evidence has deposed that he was working as Fitter under the first respondent and he was getting salary of ₹ 2,700 and ₹ 450 as mess allowance. During the cross-examination, PW.1 has admitted that he prayed relief only as against the first respondent and not against the second respondent. Though the first respondent has stated that they are no longer the contractor of the second respondent for maintenance and therefore the question of considering the petitioner for employment does not survive for consideration, no witness was examined and no document was marked on their side. In fact the first respondent has admitted that the petitioner was working under them and when the second respondent withdrew the job of break down maintenance and cylinder testing, they offered the petitioner job in chlorine filling and he was not interested in doing that job. This would clearly show that the petitioner was an employee under the first respondent.

11. Apart from the above, the petitioner as PW.1 has marked the copy of the application for gratuity by an employee as Ex.P4. As per Ex.P4, the petitioner was working under the first respondent company from 18-4-1999 to 15-5-2004 and for the said period, he has claimed gratuity of ₹13,500. Ex.P4 has not been challenged by the first respondent by cross-examining PW.1.

12. On the side of the second respondent, the copy of the Muster Rolls were marked as Ex.R2, Ex.R3, Ex.R5, Ex.R6, Ex.R7 and copy of Earnings and Deductions Report as Ex.R4 and Ex.R8 by RW.1. On perusal of the said documents, it is seen that the name of the petitioner is not found place as employee under the second respondent. RW.1 has also marked the copy of the Certificate of Registration, which proves that the second respondent has been registered as a Principal Employer and that the first respondent has been shown as one of the contractors of the second respondent. In the above circumstances, this court has come to the conclusion that the petitioner was an employee under the first respondent and there is no employer-employee relationship between the petitioner and the second respondent.

13. The contention of the petitioner is that he was terminated from service by the first respondent without any notice.

14. On the other hand, the first respondent has stated that in May 2004, the second respondent withdrew the job of break down maintenance and cylinder testing and hence, they offered the petitioner job in chlorine filling and he was not interested in doing that job and the maintenance contract was given to Meera Fabricator and the petitioner was being engaged by the said Meera Fabricator and hence, the first respondent is no longer the contractor of the second respondent for maintenance and therefore the question of considering the petitioner for employment does not survive for consideration.

15. As already stated, in order to prove their contention, no oral or documentary evidence was adduced on the side of the first respondent. In fact the first respondent was called absent and set *ex parte*.

16. The first respondent has set up his case that it is admitted that the petitioner was an employee under them, but since has absented himself without any notice, it will be presumed that he has abandoned the employment, it is pertinent to refer the following decisions, which are relevant to this case:

*2002(4) L.L.N. 850*

*State of Uttar Pradesh Versus Presiding Officer, Labour Court Agra and another:*

“Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable.”.

*1988 1 L.L.N. Page 259*

*Gaurishankar Vishwakarma Versus Eagle Spring Industries (P) Limited and others:*

“Industrial dispute - Practice and procedure - Non-employment of workman - Case of employer is that workman has abandoned service - Even in case of abandonment of service employer has to give notice to workman and hold an enquiry - It is for employer to prove such abandonment - Labour Court expected to follow judicial procedure should not depend on unverified statements to come to conclusion that it was workman who had refused to resume work.”.

17. Admittedly, the first respondent has not given any notice to the petitioner either calling upon him to resume the duty or asking him to show cause as to why his services should not be terminated for his failure to resume his duties. No wonder, therefore, that there was no enquiry held before the termination of his service. The case of the respondent is that the petitioner had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case. It is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman, calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case, the respondent has done neither. It was for the employer to prove that the workman had abandoned the service. Hence, the termination of the petitioner from service is illegal, which is liable to be set aside.

18. As far as the back wages are concerned, it is the duty of the petitioner to prove that he was not gainfully employed during the period of termination. The second respondent in his counter statement has stated that the petitioner was doing real-estate business. This version of the second respondent has not been denied or admitted by the petitioner. In the above circumstances, this court has come to the conclusion that the petitioner is not entitled to get the back wages. Accordingly, this point is answered

19. In the result, the industrial dispute is partly allowed and the petitioner was an employee under the first respondent and hence the first respondent is directed to reinstate the petitioner into service with continuity of service and other attendant benefits. However, the petitioner is not entitled for back wages. The industrial dispute against the second respondent is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 26th day of October, 2012.

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

*List of witnesses examined for the petitioner :*

PW.1 — 20-11-2010 Dhanapal

*List of witnesses examined for the respondent :*

RW.1 — 18-7-2011 Chandramohan

*List of exhibits marked for the petitioner :*

Ex.P1 — Copy of the letter, dated 8-2-2006 sent by the petitioner to Labour Officer.



- Ex.P2 — Copy of the letter sent by the petitioner to Labour Officer, dated 27-10-2006 .
- Ex.P3 — Copy of the first respondent to Labour Officer, dated 5-12-2006.
- Ex.P4 — Copy of the application for gratuity by an employee, dated 4-1-2007.
- Ex.P5 — Copy of the Failure Report, dated 9-4-2007.

*List of exhibits marked for the respondent :*

- Ex.R1 — Letter of Authorisation, dated Nil
- Ex.R2 — Copy of the Wage Register for the month of July 2004.
- Ex.R3 — Copy of the Wage Register for the month of April 2004.
- Ex.R4 — Copy of the earnings and deductions for the month of October 2005.
- Ex.R5 — Copy of the Wage Register for the month of September 2003.
- Ex.R6 — Copy of the Wage Register for the month of January 2004.
- Ex.R7 — Copy of the Wage Register for the month of August 2003.
- Ex.R8 — Copy of the earnings and deductions for the month of November 2004.
- Ex.R9 — Copy of the Certificate of Registration, dated 12-3-2004.
- Ex.R10 — Letter, dated 11-3-2006 sent by 1st respondent to Labour Officer.
- Ex.R11 — Letter sent by 1st respondent to the Labour Officer.

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

*(G.O. Rt. No. 48/AIL/Lab./J/2013, dated 9th April 2013)*

**NOTIFICATION**

Whereas, an award in I.D. No. 9/2011, dated 30-11-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, Hindustan Unilever Limited Detergent Factory, Puducherry and one Thiru Mohan, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17, of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with

the notification issued in Labour Department's G.O. Ms. No. 20/90/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order )

**S. THAMMU GANAPATHY,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present:* Thiru T. MOHANDASS, M.A. M.L.,  
Presiding Officer,  
Labour Court.

*Friday, the 30th day of November 2012*

**I.D. No. 9/2011**

Mohan,  
S/o. Mahalingam,  
Vadalur. . . . . Petitioner

*Versus*

The Managing Director,  
Hindustan Unilever Limited  
Detergent Factory,  
Puducherry. . . . . Respondent

This industrial dispute coming on 26-11-2012 for final hearing before me in the presence of Thiru R.T. Shankar, Advocate for the petitioner, Thiruvalargal L. Sathish and D. Dayanithi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

**AWARD**

The petitioner has filed a case before the Conciliation Officer as against the dismissal order passed by the respondent and since the said case has not been disposed off within 45 days, this industrial dispute is filed by the petitioner before this court under section 2A of Industrial Disputes (Amendment) Act, 2010 (24 of 2010).

2. The petitioner, in his claim statement, has averred as follows :

The petitioner was working as permanent employee in the respondent company from 16-3-1998 and he was a member in the Hindustan Unilever Employees Union and his last pay was ₹ 13,000 per month.

On 18-9-2008, the petitioner was issued with a charge sheet, wherein it has been stated that from 1-5-2008 to 15-9-2008 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R. Manager was appointed as Enquiry Officer. The Enquiry Officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner. Further in the enquiry, the petitioner was threatened to accept the charges in writing by the Enquiry Officer. In the enquiry, the Enquiry Officer had refused to give sufficient opportunity to the petitioner and had refused to mark even a single document on the part of the petitioner. The petitioner was also not permitted to examine even a single witness on his side. Based on the report of the Enquiry Officer, the petitioner was dismissed from service from 11-7-2009. The dismissal of the petitioner is in violation of principles of natural justice and contrary to the provisions of Industrial Disputes Act.

Further on the date when he was terminated, two conciliation proceedings concerning him were pending before the Conciliation Officer. Hence, the respondent management has not followed section 33(2)(b) of Industrial Disputes Act. In the above circumstances, the present industrial disputes is filed for his reinstatement along with other benefits.

3. In the counter statement, the respondent has stated as follows :

The petitioner was employed as general worker with effect from 25-9-1997. The petitioner was a chronic absentee taking leave without authorisation. The petitioner continued to be erratic in his attendance and remained unauthorisedly absent on various dates from 1-5-2008 onwards. When the petitioner did not turn up for employment till 15-9-2008, the respondent issued a detailed charge sheet, which was unclaimed by the petitioner. Then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly absent from 1-5-2008 to 15-9-2008 and even thereafter. The Enquiry Officer submitted his detailed report on 24-11-2008 by coming to the conclusion that the petitioner was guilty of the charges levelled against him. The respondent immediately issued a second show cause notice along with the Enquiry report to the petitioner on 1-6-2009 and the petitioner submitted his reply to the same on 17-6-2009, admitting his chronic absence and citing

various unsubstantiated reasons for such absence without any evidence. Since the reply was not satisfactory, the petitioner was issued the termination order on 11-7-2009. The petitioner was removed from the services for a grave misconduct of chronic, habitual absenteeism, which was admitted by him in an independent and impartial domestic enquiry. Hence, the dismissal of the petitioner from service is fully justified. Therefore, the respondent prays for dismissal of the industrial disputes.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex. P1 to Ex. P9 were marked. On the side of the respondent, RW.1 was examined and Ex. R1 to Ex. R10 were marked.

5. *The point for determination is :*

Whether the petitioner can be considered for reinstatement in service with accrued benefits ?

6. *On the point :*

According to the petitioner, he was working as permanent employee in the respondent company from 16-3-1998 and on 18-9-2008 he was issued with a charge sheet, wherein it has been stated that from 1-5-2008 to 15-9-2008 he has taken leave without approval from the management and the enquiry was conducted, for which, the H.R. Manager was appointed as Enquiry Officer and the Enquiry Officer has not conducted the enquiry in a fair manner and had acted as management representative and had conducted the enquiry in biased manner and in the enquiry, he was threatened to accept the charges in writing by the Enquiry Officer. In order to prove his contention, the petitioner was examined as PW.1.

7. *Per contra*, the contention of the respondent is that the petitioner was a chronic absentee taking leave without authorisation and he continued to be erratic in his attendance and remained unauthorisedly absent on various dates *i.e.*, 199 days from January 2007 to February 2008, 254 days from January 2008 to December 2008 and 105 days from May 2008 to September 2008 and hence they issued a detailed charge sheet, which was unclaimed by the petitioner and then the enquiry was conducted and in the enquiry proceedings, the petitioner categorically admitted the fact that he had remained unauthorisedly absent from 1-5-2008 to 15-9-2008 and based on the report of the Enquiry Officer, he was dismissed from service. In order to prove his contention, the HR Executive was examined as RW.1.

8. In order to prove his claim, RW.1 has marked the copy of the attendance record for the period from January 2007 to June 2009 as Ex. R9 and the computerised statement of overall percentage of

authorised and unauthorised absenteeism from January 2007 to September 2012 as Ex. R10. A perusal of Ex. R10 reveals that the percentage of both authorised and unauthorised absenteeism as on September 2012 is 26.49%.

9. In this regard, the learned counsel for the petitioner has submitted that in the year 2002, a long-term settlement was signed by the trade unions, it has been agreed by both the parties that the computerised time attendance system will be implemented and therefore the respondent management introduced a time attendance system in the year of 2003 and after that in the year 2005, the respondent management without consultation of any union's or any terms of employment or leave rules or standing order clause unilaterally introduced the attendance/automatic lock/reject system and this was disputed by the trade union. The learned counsel for the petitioner further submitted that the petitioner union filed a writ petition before the Hon'ble High Court, Madras and the Hon'ble High Court dismissed the said petition stating that they can raise the said dispute before the Industrial Tribunal for remedy.

10. On the side of the petitioner, the President of the Hindustan Unilever Employees Association was examined as PW.2. PW.2 in his evidence has deposed that he was working as Skilled Operator in the respondent company and the petitioner is the member of his association and Ex. P5 is the application given by the petitioner for joining his association. PW.2 further deposed that the respondent company introduced computerised time attendance system and whenever the workmen registered their names, it was programmed that registration will be directly rejected and utilising the said programme and with a view to victimise the workers, the registration was locked and the petitioner complained that his presence was not registered in the computer and the same was complained to the Inspector of Factories under Ex.P6 and since he has not taken any steps, the union filed a writ petition before the Hon'ble High Court, Madras and Ex. P9 is the copy of the judgment given by the Hon'ble High Court, Madras. A perusal of Ex. P9 reveals that the petitioner's union complained about introduction of computerised time attendance system and the Hon'ble High Court, Madras after discussing all the material aspects, dismissed the writ by stating follows:-

“The union have agreed for the introduction of TAS system of attendance by a settlement. Therefore, it is too late for the petition to question the same ... .. Therefore, it cannot be said that the action of the second respondent is illegal and without the authority of law. Even otherwise, under section 111A of the Factories Act, 1948, every workman employed in the factory is entitled to

obtain from the occupier the information relating to workers' health and safety at work. As per section 111A (iii), he can also represent to the Inspector directly or through his representative the matter of inadequate provision for protection of his health and safety in the factory. Therefore, in case of violation of any of the provisions of the Factories Act or Rules made thereunder, it was always open to the workmen or through their representative to complain to the appropriate authority and seek redressal.”

The Hon'ble High Court, Madras in Ex. P9 has given direction to the petitioner's union to approach appropriate authority for their relief. The petitioner or his union should approach the concerned authority for their remedy or should prefer the appeal as against the judgment of the Hon'ble High Court, Madras. In the above circumstances, Ex. P9 becomes final and it binds the petitioner's union and consequently, the contention of the learned counsel for the petitioner that the introduction of attendance/automatic lock/reject system is illegal, cannot be accepted. Hence, the respondent has proved through Ex. R9 and Ex. R10 that the petitioner has unauthorisedly absent for 199 days from January 2007 to February 2008, 254 days from January 2008 to December 2008 and 105 days from May 2008 to September 2008.

11. The contention of the learned counsel for the petitioner is that the petitioner has been working under the respondent company for the past 12 years, but in the enquiry proceedings, without granting sufficient time, the respondent has finished the entire enquiry proceedings within two hours and closed it and therefore with intention to victimise the petitioner, the respondent management has been acted against the petitioner and hence, the enquiry was not conducted fair and proper manner.

12. On the other hand, the contention of the learned counsel for the respondent is that the enquiry was conducted in a free and fair manner by giving full opportunity to the petitioner to disprove the charges and there is absolutely no lacuna in the enquiry proceedings and it has been conducted in a free and fair manner after following all the requisite principles of natural justice. He further submitted that the petitioner during the enquiry proceedings admitted the charges and based on his admission, the petitioner was found guilty of the charges.

13. RW.1 has marked the copy of the enquiry proceedings as Ex. R3. On perusal of Ex. R3, it is seen that the entire proceedings beginning with charge sheeting the petitioner to issuing 2nd show cause

notice to him were done in Tamil, the Enquiry Officer explained the entire proceedings in detail to the petitioner in Tamil, the Enquiry Officer offered permission to the petitioner to engage defense assistance of his choice and in the enquiry proceedings, the petitioner has categorically admitted the fact that he had remained unauthorisedly absent, as stated in the charge sheet and then the petitioner himself requested the Enquiry Officer to close the enquiry after recording his admission. The relevant portion of the enquiry proceedings is as follows:-

“குற்றம் சாட்டப்பட்ட தொழிலாளி திரு. மோகன் அவர்களிடம் இந்த விசாரணையின் தன்மை, நடைபெறும் விதம், அவருக்கு அளிக்கப்பட்டுள்ள முழு வாய்ப்பு மற்றும் இயற்கை நீதி முறையில் இந்த விசாரணை நடைபெறும் என்று விளக்கி கூறப்பட்டது. மேலும் இந்த விசாரணைக்கு அவருக்கு உதவியாக சக தொழிலாளி யாரேனும் வைத்துக் கொள்ளலாம் என்று கூறப்பட்டது. எனினும் இந்த விசாரணை தனக்கு சக தொழிலாளி யாரும் வேண்டாம் என்று கூறினார். இதனையடுத்து இந்த விசாரணையில் நிர்வாகம் உங்கள் மீது சுமத்தப்பட்டுள்ள குற்றச்சாட்டுகளை ஏற்கிறீர்களா அல்லது மறுக்கிறீர்களா என்று கேட்டதற்கு, தான் குற்றங்களை முழு மனதுடன் ஏற்கிறேன் என்று கூறினார். மேலும் இந்த விசாரணையை இத்துடன் முடித்துக் கொள்ளுமாறும் கேட்டுக் கொண்டார்.”

The petitioner signed in the enquiry proceedings to that effect. Hence, the petitioner was found guilty of the charges and based on the enquiry report, the second show cause notice was issued under Ex. R5 intimating the punishment of dismissal, for which the petitioner has submitted his explanation under Ex. R6 and since the explanation given by the petitioner was not satisfactory, the dismissal order under Ex. R7 was sent to the petitioner.

14. The learned counsel for the petitioner has submitted that in the enquiry proceedings, the H.R. Executive had prepared all the charges and commanded and demanded this petitioner to obtain his signature over the same, but on the first day of the said enquiry, the petitioner contested the same effectively but there is no opportunity for the same, whereas, on 23-9-2012 the said H.R. Executive threatened the petitioner and obtained signature over the said prepared charges forcibly, such act is absolutely illegal and violation of principles of natural justice.

15. But, the petitioner has not produced any evidence to show that his signature was obtained in the enquiry proceedings forcibly. Further after sending the second show cause notice under Ex. R5, the petitioner has sent his explanation under Ex. R6 and in Ex. R6, the petitioner has not stated anything about the alleged threat made by the H.R. Executive during the course of enquiry proceedings. In fact, the

petitioner in his explanation under Ex. R5 admitted about the unauthorised absence and prayed leniency before the respondent management. In the above circumstances, the said version is only an after-thought, which cannot be accepted.

16. The contention of the learned counsel for the petitioner is that the general procedure at the enquiry would normally be the appointment of Enquiry Officer has to be informed to the petitioner by the respondent management but the respondent management neither inform nor appoint any Enquiry Officer for conducting the enquiry, but the H.R. Executive himself acted as an Enquiry Officer and conducted the domestic enquiry without following the principles of natural justice.

17. It is true that the H.R. Executive of the respondent management was acted as Enquiry Officer. When the petitioner himself admitted the charges framed against him, this court cannot see the other aspects. Hence, there is nothing wrong in conducting the domestic enquiry by the H.R. Executive of the respondent management.

18. The further contention of learned counsel for the petitioner is that the respondent had not followed section 33(2)(b) of Industrial Disputes Act, 1947 and had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharged and at the same time make an application for approval of the action taken by him and if the approval is not granted under section 33 (2)(b) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision:—

*2002(1) L.L.N. 639 :*

*Jaipur Zila Sahakari Bhoomi Vikas Bank Limited Vs. Ram Gopal Sharma and Others :—*

“Industrial Disputes Act, 1947, Section 33(2)(b), Proviso (as amended in 1956) - If approval is not granted under Section 33(2)(b) or failure to make application under Section 33(2)(b) seeking approval, renders order of dismissal inoperative - Dismissal becomes ineffective from date it was passed - Employee becomes entitled to wages from date of dismissal.”

19. On the other hand, the learned counsel for the respondent has submitted that the petitioner is not a member of Hindustan Unilever Employees Union and the petitioner has no nexus or connection with the disputes which is pending before the Conciliation Officer and the industrial dispute was raised in individual capacity of the petitioner under section 2 A of Industrial Disputes Act.

20. PW.2, the President of the Hindustan Unilever Employees Association in his evidence has deposed that the petitioner was a member in their association and the copy of the admission application was marked through him as Ex. P5. As per Ex. P5 the petitioner was a member in Hindustan Unilever Employees Union from 6-3-2008.

21. The learned counsel for the respondent has submitted that the petitioner has not produced any receipt for payment of subscription of annual membership to prove that he was the member in Hindustan Unilever Employees Union. He further submitted that PW.2 the Union Leader was extensively cross-examined on the membership of the petitioner and his attention was brought to non-production of certified register containing names of the members of union as required in Trade Unions Act, the non-production of audited balance sheet of the union with full details on subscription collected from its members and PW.2 could not give any convincing answers to these questions in cross-examination.

22. It is true that the receipt of payment of subscription of annual membership, register containing names of the members of the union and the audited balance sheet of the union have not been produced on the side of the petitioner. But PW.2 in his cross-examination has stated that they are maintaining the said registers and they are ready to produce the same, if required. On the side of the respondent no petition has been filed to produce the said document before this court. Hence, the petitioner has not proved through the oral evidence of PW.2 and the documentary evidence of Ex.P5 that he was the member in the Hindustan Unilever Employees Union from 2008.

23. The learned counsel for the respondent has submitted that the petitioner has never pleaded and proved as to what was the dispute that was involved in the other two references to the conciliation and how the petitioner is connected to the said dispute. He further submitted that the present dispute is only an individual dispute under section 2A of Industrial Disputes Act unsupported and unsponsored by any union, whereas, the two conciliation proceedings referred to by the petitioner were industrial disputes raised by the unions under section 2(k) concerning general working conditions of all the workers. He further submitted that the disputes raised in the previous conciliation proceedings by Hindustan Unilever Employees Union had absolutely no nexus or connection with the petitioner. In order to support his claim, he relied upon the following decisions:-

*CDJ 1962 SC 016*

*Digwadih Colliery Vs. Ramji Singh :*

“The respondent's case set out in this application appears to be that, because there was Reference No. 60 of 1959 pending between the appellant and some of its employees, section 33(2) applied, but, unless it is known as to what was the nature of the dispute pending in the said reference, it would plainly be impossible to decide whether the respondent is a workman concerned within the meaning of section 33(2). In his application, the respondent has made no averment about the nature of the said dispute; and so the tribunal was clearly in error in holding that the broad construction of section 33(2) automatically led to, the conclusion that the respondent was the workman concerned and could, therefore, claim the protection of Section 33(2).”

*1992 1 LLJ 837 Madras*

*Rajagopal and Others Vs. EDI Party Limited, and Another :*

“10. In the instant case, even assuming that the first petitioner was a member of the union which had sponsored the dispute, the first petitioner was not bound by the award that was passed; nor was he directly connected with the dispute already pending before the Labour Court. In view of the aforesaid reasoning that the first petitioner cannot be construed as the workman concerned and if the first petitioner happened to be the workman not concerned with the dispute for the reasons stated above, there was no need for the employer to seek permission as contemplated under section 33(2)(b) of the Act. Simply because the first petitioner happened to be the member of the union, which sponsored the dispute, the petitioner cannot claim that he is a workman concerned with reference to the dispute which was then pending unless there is some other common feature in the disputes which were pending and the claim of the petitioner.”

24. It is true that the present industrial dispute was filed by an individual name of the petitioner. If the conciliation has not been completed within 45 days, the individual can file the claim statement directly before the Labour Court as per amended section 2-A of Industrial Disputes Act, 1947. Accordingly, the petitioner has filed the present industrial dispute before this court. Hence, I find nothing wrong in filing the present industrial dispute by the petitioner individually.

25. Further the learned counsel for the respondent himself has admitted that there were two conciliation proceedings pending at the time of termination of the

petitioner, but his only defence is that the disputes raised in the previous conciliation proceedings by the union had absolutely no nexus or connection with the petitioner.

26. In this regard, the learned counsel for the petitioner has submitted that the dispute was raised for charter of demands in I.D. No. 1065/2008/LO(C)/AIL and the another dispute was raised for changing of service condition, since the respondent management without giving 9-A notice to the union changed their service condition including the petitioner herein in I.D. No. 1458/2009/LOC/AIL. In order to prove the same, PW.1 has marked the copy of the notice of enquiry sent to the respondent management as Ex. P3. The petitioner has not proved that he is a member of Hindustan Lever Employees Union. Hence, Ex. P3 would not support the case of the petitioner. The learned counsel for the respondent has not challenged the document under Ex. P3. In the above circumstances, when the Conciliation Officer has conducted the conciliation in respect of the issues with regard to the service conditions of the employees and charter of demands pertaining to the respondent management, this court has to see whether approval under section 33(2)(b) of Industrial Disputes Act in this case is legally required or not. Eventhough the petitioner is an employee under the respondent management, he has not proved that he is a member in Hindustan Unilever Employees Union, who has raised the said issues. Hence, section 33(2)(b) of Industrial Disputes Act is not applicable to the petitioner, as such the respondent management has rightly decided that they need not pay the wages for one month and need not file an application to the authority before which the proceeding is pending for approval of the action taken by them.

27. The learned counsel for the respondent submitted that the issue of chronic absenteeism has become a very serious issue in the respondent's factory, crippling its production and productivity and disturbing its work schedules and man power allotment and the high percentage of unauthorised absenteeism clearly indicates that workers are taking their employment casually and the leniency shown by the respondent in the past in not taking stringent disciplinary action was also an encouraging factor. The learned counsel for the respondent relied upon the following decisions to support his claim:-

*CDJ 2009 SC 1194 :*

*Union of India Vs. Others Vs. Bishamber Das Dogra :—*

“Admittedly, the respondent employee has not completed the service of six years and had been imposed punishment three times for remaining

absent from duty. On the fourth occasion when he remained absent for 10 days without leave, the disciplinary proceedings were initiated against him.  
... ..

... There is nothing on record to show any explanation for such repeated misconduct or absenteeism. The Court/Tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned. The respondent was a guard in CISF. No attempt had ever been made at any stage by the respondent - Employee to explain as to what prejudice has been caused to him by non-furnishing of the enquiry report.

... .. Appeal filed by the respondent employee was decided by the Statutory Appellate Authority giving cogent reasons. The facts of the case did not present special features warranting any interference by the court in limited exercise of its powers of judicial review. In such a fact situation, we are of the view that the High Court should not have interfered with the punishment order passed by the disciplinary authority on such technicalities.”

*CDJ 2007 MHC 3398 :*

*G. Vijayan Vs. The Presiding Officer, Labour Court, Salem and Another :—*

“This is a classic instance wherein misplaced sympathy has been shown by the Labour Court, having found that the domestic enquiry was conducted in a fair manner. This practice of showing misplaced sympathy or generosity or compassionate ground to review the quantum of punishment is held to be impermissible by hierarchy of judgments of the apex court. It is also clear that the apex court has held that only in cases where the punishment awarded is shockingly disproportionate to the charge proved, the court can interfere to reduce the punishment. ... .. The award of the labour in ordering reinstatement of the appellant with service benefits, however, without back wages is not on proper and sound reasoning as found by the learned single Judge. In view of the same, the writ appeal fails and the same is dismissed.”

*2006-1-LLJ-55 (Madras) :*

*O. Krishnan Vs. Management of Dheeran Chinnamalai Transport Comoration :—*

“In the present case, however, apart from unauthorised absence for which disciplinary proceedings were being initiated, the disciplinary authority has relied upon the fact that on previous occasions also the petitioner had remained unauthorisedly absent. The disciplinary authority

had also considered the fact that there has been several other punishments imposed upon the petitioner on numerous occasions and considering all these aspects, the disciplinary authority had come to the conclusion that the person was to be dismissed. The Labour Court on independent consideration has also come to the very same conclusion and has held that punishment of dismissal was justified in the peculiar facts and circumstances of the case. In the absence of any patent illegality in such orders, it is difficult for the High Court to come to any different conclusion and to interfere with the punishment.”

2010-4-LLJ 245:

*Indian Coffee Board Vs. The Presiding Officer :—*

“Not only has no evidence/document whatsoever of illness has been produced but no particulars of the serious prolonged illness, if any, suffered by the respondent No. 2 workman have been stated. ... .. Court recently in Union of India Vs. Bishamber Das Dogra MANU/SC/0887/2009 has reiterated that absenteeism is a gross violation of discipline. It goes without saying that such absenteeism of a workman can paralyse the working/functioning of the employer. The Labour Court ignored the facts which starte one in the face in the facts of the present case.”

28. Now we have to see whether the punishment of dismissal is proportionate to the charges levelled against the petitioner for unauthorised absence. The petitioner in the disciplinary proceedings has admitted the charges and prayed leniency for the unauthorised absence. Apart from the above, according to the respondent, the petitioner was an employer under them from 25-9-1997 and he was chronic absentee from January 2007 only. Prior to 2007, there was no remarks or misconduct by the petitioner. Of course the history sheet of the workman shows that the period of absence from 2007 to 2008 are very much long period of absence, which cannot be considered leniently. About three spells of unauthorised leave taken by the petitioner were admitted by the petitioner, which were also warned in time and he was also dismissed once for the unauthorised leave taken from May 2008 to September 2008 (105 days). These lapses are very serious in nature and hence considering the habit of long unauthorised absence, I feel that he cannot be reinstated into service. However, the punishment of dismissal from the service is disproportionate one, but I am of the opinion that he can be awarded the monetary compensation to him and his family members in the circumstances of the case. Hence, I feel that the monetary compensation only will be the better solution in this case to settle this disputes between

the parties, which would meet the ends of justice. Considering the service of the petitioner and starving family members depending the workman for livelihood, he can be awarded a sum of ₹ 2,00,000 in *lump sum* towards compensation. Accordingly, this point is answered.

29. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement and the other benefits. However, he is entitled for ₹ 2,00,000 (Rupees two lakhs only) towards monetary compensation. No costs. Time for three months.

Typed to my dictation, corrected and pronounced by me in the open court on this 30th day of November, 2012.

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.

*List of witnesses examined for the petitioner :*

- PW.1 — 4-10-2012 – Mohan  
PW.2 — 12-10-2012 – Ezhumalai

*List of witnesses examined for the respondent :*

- RW.1 — 25-10-2012 – Arokia Berdila Anand

*List of exhibits marked for the petitioner :*

- Ex. P1 — Copy of the dismissal order, dated 11-7-2009  
Ex. P2 — Copy of the enquiry proceedings  
Ex. P3 — Copy of the notice sent by the Conciliation Officer to the respondent, dated 24-7-2008.  
Ex. P4 — Copy of the failure report, dated 14-7-2009  
Ex. P5 — Copy of the admission application for joining in the union, dated 6-3-2008.  
Ex. P6 — Copy of the letter, dated 20-2-2008 sent to the Inspector of Factories.  
Ex. P7 — Copy of the conditions of service for change, dated 21-10-2010.  
Ex. P8 — Copy of the letter sent to the respondent, dated 13-5-2008 by the union.  
Ex. P9 — Copy of the judgment of Hon'ble High Court, dated 8-6-2010.

*List of exhibits marked for the respondent :*

- Ex. R1 — Authorisation letter, dated 24-10-2012  
Ex. R2 — Copy of the advise letter given by the respondent.

- Ex. R3 — Copy of the enquiry proceedings, dated 3-11-2008.
- Ex. R4 — Copy of the enquiry report, dated 24-11-2008
- Ex. R5 — Copy of the second show cause notice, dated 1-6-2009.
- Ex. R6 — Copy of the reply by the petitioner, dated 17-6-2009.
- Ex. R7 — Copy of the punishment order, dated 11-7-2009.

- Ex. R8 — Copy of the letter given by the petitioner, dated 20-7-2009.
- Ex. R9 — Copy of the extract of computerised muster roll.
- Ex. R10 — Computerised statement of overall percentage of authorised and unauthorised absenteeism.

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY  
**DIRECTORATE OF SCHOOL EDUCATION**

No. 353-359/DSE/EC/C/2013.

Puducherry, the 3rd April 2013.

NOTIFICATION

It is hereby informed that the following candidates have lost their original Higher Secondary Examinations Mark Certificates beyond the scope of recovery and necessary steps have been taken to issue duplicate certificates. If any one finds the original Mark Certificates, they may be sent to the Secretary, State Board of Secondary Examinations, College Road, Chennai – 600 006, for cancellation as they are no longer valid.

Sl. No.	Name and address of the applicant	Register No., session and year	Sl. No. of the mark certificate	School in which studied last
(1)	(2)	(3)	(4)	(5)
Thiru/Tmt./Selvi :				
1	Devika, M.	434462 March 2004	HSG 0871073	Manimegalai Government Girls' Higher Secondary School, Puducherry.
2	Najumudheen, L.	545740 March 2010 213925 June 2010	HSG 5138902  HSG 5478038	Senthil Matriculation Higher Secondary School, Puducherry.  Private study
3	Pushparaj, D.	484249 March 2008	—	Jeevanandam Government Higher Secondary School, Karamanikuppam Puducherry.
4	Raja Dit Benjamin	800574 March 1994 913310 September 1994	AB 0964815  AB 1195128	Calve College Government Higher Secondary School, Puducherry.  Private study
5	Ramesh, S.	473531 March 2007	2929492	Government Higher Secondary School, Korkadu, Puducherry.
6	Sundar Singh, J.	761878 March 2001	HSG 1208547	Petit Seminaire Higher Secondary School, Puducherry.
7	Vijayalakshmi, R.	474701 March 2007	2934513	Kalaingar Karunanidhi Government Higher Secondary School, Kalitheerthalkupam, Puducherry.

**J. KRISHNARAJU,**  
Joint Director.